

35 U.S.C. §103(a) as obvious over Sorrells. Applicants respectfully traverse the Examiner's rejections.

Independent claims 7, 9 and 13 are patentable over Sorrells. Each of these claims recite a polymeric material "disposed in" a plurality of textile tufts. The Examiner acknowledges that there is no explicit teaching of this limitation in Sorrells, but asserts that the limitation is inherent in the invention of Sorrells. Specifically, the Examiner asserts that pressing the primary and secondary backings together until the hot melt adhesive has set (see Sorrells, col. 6, lines 23-33) would cause the adhesive to "at least partially penetrate into the primary backing and tufts." The Examiner further supports this conclusion by asserting that it is "typical in the art to choose process conditions . . . such that the adhesive backing penetrates into the tufts . . . to increase tufted bind strength" (see Office Action, page 4, para. 8). Applicants respectfully submit that the Examiner's assertion is insufficient to support a *prima facie* case for inherency.

"To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by a person of ordinary skill.'" In re Robertson, 169 F.3d 743, 745 (Fed. Cir. 1999) (citations omitted, emphasis added). In this case, the application of pressure when adhesively laminating the secondary to a tufted primary backing will not necessarily result in the adhesive penetrating into the primary backing or the tufts. As explained in the specification of the present invention, the application of such pressure during a conventional lamination process does not result in any substantial penetration of the backing or tufts by the adhesive (see specification, page 6, line 8 through page 7, line 8). To the contrary, such penetration does not occur in the present invention until the laminated assembly is reheated. (see specification, page 6, line 8 through page 7, line 8). The laminated assembly of Sorrells

is not reheated. Thus, Applicants respectfully submit that claims 7, 9 and 13 are patentable over Sorrells.

Should the Examiner continue to assert that the adhesive would necessarily penetrate of into the primary backing or tufts of a laminar assembly made according the process taught by Sorrells, Applicants respectfully request that the Examiner cite a reference or other extrinsic evidence in support of this assertion. In re Robertson, 169 F.3d at 745, M.P.E.P. §2144.03.

Applicants also respectfully submit that the permeability range recited in claims 7, 10 and 15 is not taught by Sorrells or inherent in the invention of Sorrells. The Examiner asserts that such permeability can be presumed by “the use of like materials (i.e., tufted primary backings, discontinuous polymeric adhesive layers and a secondary backing) and in like objectives (i.e., to provide a breathable carpet).” Applicants respectfully submit that the Examiner's reasoning does not support a *prima facie* case for inherency.

Applicants recognize that the differences between the process of Sorrells and the present invention are not *per se* relevant to apparatus claims. However, in the context of determining whether the permeability of Sorrells' fabric is necessarily similar to that of the claimed invention, differences in the processes used to impart such permeability are certainly relevant. Contrary to the Examiner's assertion, the level of permeability imparted by reheating and stretching a laminated carpet assembly, as in the present invention, would almost certainly be substantially different from the permeability imparted by mechanically piercing an otherwise impervious laminated assembly (Sorrells, col. 5, lines 23-31) as taught in Sorrells. Thus, claims 7, 10 and 13 are patentable over Sorrells.

In view of the foregoing, claims 8, 10-12 and 14-15, which depend from claims 7, 9, and 13, respectively, are also patentable over Sorrell. Applicants respectfully request

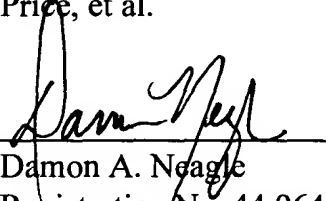
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reconsideration of the application, withdrawal of the rejections of claims 7-15, and a Notice of Allowance for claims 7-15.

If the Examiner believes an interview, personally or telephonically, would materially advance the prosecution of this application, it is respectfully requested that she get in contact with the undersigned.

Respectfully submitted,

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